

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

AMY BRYANT, M.D.,)
Plaintiff,)
v.)
JOSHUA H. STEIN, in his)
official capacity as)
Attorney General for the)
State of North Carolina,)
JEFF NIEMAN, in his official)
capacity as District Attorney)
for North Carolina 18th)
Prosecutorial District,)
KODY H. KINSLEY, in his)
official capacity as the)
North Carolina Secretary of)
Health and Human Services,)
MICHAUX R. KILPATRICK, MD,)
PHD, in her official capacity)
as President of the North)
Carolina Medical Board; and)
CHRISTINE M. KHANDELWAL, DO,)
DEVDUTTA G. SANGVAI, MD, MBA,)
JOHN W. RUSHER, MD, JD,)
WILLIAM M. BRAWLEY, W. HOWARD)
HALL, MD, SHARONA Y. JOHNSON,)
PHD, FNP-BC, JOSHUA D. MALCOLM,)
JD, MIGUEL A. PINEIRO, PA-C,)
MHPE, MELINDA H. PRIVETTE, MD,)
JD, ANURADHA RAO-PATEL, MD)
and ROBERT RICH, JR., MD,)
in their official capacities)
as members of the North)
Carolina Medical Board,)
)
Defendants,)
1:23-cv-77

and)
)
PHILIP E. BERGER, in his)
official capacity as)
President Pro Tempore of the)
North Carolina Senate, and)
TIMOTHY K. MOORE, in his)
official capacity as Speaker)
of the North Carolina House)
of Representatives,)
)
Defendant-Intervenors.)

ORDER

This matter comes before the court upon Plaintiff's Motion for Leave to File an Amended Complaint and to Expedite Supplemental Briefing on Intervenors' Motion to Dismiss.

(Doc. 73.) Plaintiff Amy Bryant, M.D. moves the Court for leave to file and serve an Amended Complaint. (See Ex. 73-1.) To avoid unnecessary cost and delay, Plaintiff requests that this court treat Intervenor-Defendants' pending Motion to Dismiss, (Doc. 53), as applying to the Amended Complaint, and that within one week following the filing of Plaintiff's Amended Complaint, Intervenor-Defendants may supplement their motion to dismiss and Plaintiff be permitted to respond to any supplemental briefing within one week thereafter. (Doc. 73 at 6.) Defendant Joshua Stein, in his official capacity as Attorney General for the State of North Carolina, does not oppose this motion, (Doc. 75), Defendant Jeff Neiman, in his official capacity as District Attorney for North Carolina 18th Prosecutorial District, takes

no position on Plaintiff's motion, (Doc. 76), Defendant Kody H. Kinsley, in his official capacity as the North Carolina Secretary of Health and Human Services, does not oppose this motion, (Doc. 79), and Intervenor-Defendants Philip E. Berger and Timothy K. Moore responded, (Doc. 80). Having reviewed the pleadings, and for good cause shown, this court finds that Plaintiff's motion for leave to amend should be granted.

With respect to the briefing on the motion to dismiss, this court does not object, in general, to the parties' agreement that the court refer to the original briefing on the motion to dismiss, (Docs. 53, 54, 64, 68, 72). (Compare Doc. 73 at 6, 15, with Doc. 80 at 2-3.) However, the original complaint, (Doc. 1), is now moot. As a practical matter, there are a number of citations in the briefs that refer to the original complaint or to documents attached to the original complaint. It is this court's preference that the briefs be cite-checked and refiled to correspond to the Amended Complaint to avoid any confusion. It should not take the parties much effort or time to revise the citations in the briefs to correspond to the Amended Complaint and refile the briefs in their otherwise original form.

It is not necessary for any party who filed a pleading stating that the party takes no position on the motion to dismiss to refile that pleading. The court will take judicial notice that those defendants who have previously filed notice of

no position on the motion to dismiss, (Docs. 58, 66), continue to take no position, and those defendants need not refile their position on the motion unless that position has changed. With respect to the filing by Defendant Kody H. Kinsley, (Doc. 67), this court does not find that response helpful to evaluation of the motion to dismiss. Furthermore, the filing fails to provide an explicit response as a matter of law to the motion to dismiss. The court finds that filing takes no position on the motion. The court will take notice of that filing, (Doc. 67), and it need not be refiled.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Leave to File an Amended Complaint and to Expedite Supplemental Briefing on Intervenors' Motion to Dismiss, (Doc. 73), is **GRANTED**, and Plaintiff shall file and serve the Amended Complaint, (Doc. 73-1), as a new pleading upon the docket within seven days of this order.

IT IS FURTHER ORDERED that Intervenor-Defendants Phillip E. Berger and Timothy K. Moore shall refile, within five days of the filing of the Amended Complaint, their original motion to dismiss and accompanying brief with only the citations amended to correspond to the Amended Complaint. Within five days thereafter, Plaintiff and Defendant Joshua Stein shall refile their responses to the motion to dismiss with only citations amended to correspond to the amended complaint.

Intervenor-Defendants' reply shall be filed within five days thereafter.

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Civil Procedure 12(b) (6), Intervenor-Defendants' pending Motion to Dismiss, (Doc. 53), is not responsive to the operative pleading, which is the amended complaint. See Young v. City of Mount Rainer, 238 F.3d 567, 572 (4th Cir. 2001). That motion to dismiss, (Doc. 53), is **DENIED WITHOUT PREJUDICE** as **MOOT**.

This the 7th day of August, 2023.

William L. Oshun, Jr.
United States District Judge